

## ARIZONA REVISED STATUTES TITLE 26, CHAPTER 2, ARTICLE 3

### *EMERGENCY PLANNING AND COMMUNITY RIGHT TO KNOW ACT*

#### **26-341. Definitions**

In this article, unless the context otherwise requires:

1. "Commission" means the Arizona emergency response commission.
2. "Committee" means a local emergency planning committee.
3. "Extremely hazardous substances", "facility", "hazardous chemical", "person", "release" and "toxic chemical" have the meaning set forth in section 329 of title III.
4. "Hazardous substance" has the meaning set forth in the comprehensive environmental response, compensation, and liability act of 1980 (P.L. 96-510; 94 Stat. 2767), as amended by SARA.
5. "SARA" means the superfund amendments and reauthorization act of 1986 (P.L. 99-499).
6. "Title III" means title III of SARA.

#### **26-342. Relationship to other law; declaration of application**

This article does not:

1. Preempt any local charter, ordinance or code.
2. Require any state agency or local government to adopt or enforce any statute or rule.
3. Affect or modify the obligations or liabilities of any person under federal law.

#### **26-343. Arizona emergency response commission; advisory committee; powers and duties**

- A. The Arizona emergency response commission is established consisting of the director of the division, who shall serve as chairman, and the directors, or their respective designees, of the department of environmental quality, the department of health services, the department of public safety and the department of transportation.
- B. An advisory committee to the commission is established consisting of:
  1. The state fire marshal.
  2. The chief administrative officer or his designee, of the following agencies:
    - (a) Arizona department of agriculture.
    - (b) Corporation commission.
    - (c) Industrial commission.
    - (d) Radiation regulatory agency.
    - (e) State mine inspector.
  3. Two representatives nominated by the Arizona fire chiefs association incorporated or its successor agency. One nominee shall represent a fire department serving a population of two hundred fifty thousand or more persons. One nominee shall represent a fire department or fire district serving a population of less than two hundred fifty thousand persons. The term of appointment is for two years.
2. Procedures and implementing programs for chemical emergency planning and preparedness.

- C. The governor shall appoint four private sector representatives to the advisory committee to the commission after reviewing the recommendations provided by the commission. The governor shall appoint, or reappoint, two of the members each year from the private sector, to serve terms of two years. These members, to the extent practicable, shall have technical expertise in the emergency response field.
- D. The members of the commission shall serve without compensation but are eligible for reimbursement for travel and other expenses as provided by law. The division and the department of environmental quality shall provide such professional, technical or administrative staff support as necessary to implement and perform the commission duties.
- E. The commission shall meet as often as necessary and may organize itself into such support committees as necessary to implement this article and title III in this state. The full commission shall meet at least annually. The commission may adopt internal operating rules.
- F. The commission shall administer this article and the rules adopted under this article. The commission shall administer title III in this state and may conduct whatever activities are necessary to implement this article and title III in this state. The commission is granted all the authority and responsibilities of a state emergency response commission for purposes of title III.
- G. The commission may procure by contract the temporary or intermittent services of experts or consultants if such services are to be performed on a part-time or fee-for-services basis and do not involve the performance of administrative duties. The commission may also enter into agreements with political subdivisions for purposes of this article. The commission may also accept on behalf of this state any reimbursement, grant or gift that may become available for purposes of this chapter. The commission shall transmit any such monies to the state treasurer for deposit in the emergency response fund.
- H. The commission shall establish a program of financial grants to local governments funded through the division by appropriations to the emergency response fund. The grants shall be dedicated to and used for local compliance with this article. The commission shall include procedures for applying for the grants and qualifying criteria for awarding the grants.
- I. The commission shall adopt and may modify, suspend or repeal rules pursuant to title 41, chapter 6. The rules may not be more stringent than title III and the federal regulations adopted under title III, except as specifically authorized in this article. These rules shall implement this chapter and title III in this state. The authority to adopt rules includes establishing:
  1. Procedures for handling public information requests.
  3. Community right-to-know program reporting requirements.

4. Release reporting requirements.

**26-344. Emergency planning districts; local emergency planning committees**

- A. The commission shall designate emergency planning districts to facilitate preparing and implementing district emergency plans. If appropriate, the commission may designate cities, towns, counties or multi-jurisdictional planning organizations as such districts. The commission may also enter into intergovernmental agreements with other states or political subdivisions of other states to establish multi-jurisdictional planning districts. The commission may revise its designation of emergency planning districts as necessary.
- B. The commission, after designating emergency planning districts, shall appoint members of a local emergency planning committee for each emergency planning district. The governmental entity for the city, town, county or multi-jurisdictional planning organization encompassing the district shall provide administrative support for the local emergency planning committee and shall nominate persons for initial appointment to the committee. On establishment of the committee, the committee chairman on a majority vote of the committee may nominate subsequent committee members. Each committee shall include, at a minimum, representatives from each of the following groups or organizations:
  1. Elected state and local officials.
  2. Law enforcement, civil defense, fire fighting, first aid, health, local environmental, hospital and transportation personnel.
  3. Broadcast and print media.
  4. Community groups.
  5. Owners and operators of facilities subject to the requirements of this article.
- C. The committee shall appoint a chairman and shall adopt procedural rules by which the committee shall function including the requirements set forth in section 301 of title III.
- D. The commission, as it deems appropriate, may modify its designations of emergency planning districts or its appointments to the emergency planning committees. Members of the public may petition the commission to modify the membership of a local emergency planning committee.

**26-345. Comprehensive emergency response plans**

- A. The local emergency planning committees shall comply with section 303 of title III.
- B. Based on information from the commission and state and local emergency and disaster agencies and departments, as well as information obtained from facilities subject to this article and title III, each local committee shall prepare and annually review an emergency response plan for its emergency planning district in order to address emergencies due to releases from facilities. Unless otherwise provided in this article, a substance is subject to the requirements of this article if it is an extremely hazardous substance as listed and published by the administrator of the United States environmental protection agency, or its successor, and it is held in quantities at or above the threshold planning quantity as established pursuant to section 302 of title III.

and transportation vehicles in its emergency planning district. After completing an emergency plan for an emergency planning district, the local emergency planning committee shall provide a copy of the plan to the district's governmental entity for incorporation into the entity's emergency operations plan and submit a copy of the plan to the commission. The commission shall review the plan and make recommendations to the committee on revisions that may be necessary to ensure that it meets the requirements of this article or any rules adopted under this article. The commission shall further ensure that the plan is coordinated with the emergency response plans of adjoining emergency planning districts as applicable. To prevent a delay in implementing any emergency plan, the commission shall endeavor to review each plan within a sixty day period and provide comments or recommendations for modifications within that period. The commission shall establish a period of time, not normally to exceed sixty days, for the committee to resubmit the emergency plan. The commission, at its own initiative, may assign the highest priority to those plans which include the geographic areas which have the greatest number of facilities that pose the greatest risk of harm to the public health, safety or welfare or the environment.

- C. Each local emergency planning committee shall conduct at least a biennial exercise of its emergency plan and shall provide at least thirty days' notice of these exercises to the commission. The region IX United States environmental protection agency office of primary responsibility for title III, or its successor, or the commission may participate in exercise development and observe the exercise and may provide comments to the committee regarding the exercise.
- D. Each local emergency planning committee shall evaluate the need for resources necessary to develop, implement and exercise the emergency plan in its district and shall make recommendations with respect to the need for additional resources that may be required and the means for providing such additional resources.
- E. Each emergency plan shall include provisions listed in section 303C of title III and, in addition, shall include:
  1. Identifying the heads of the emergency response organizations for designated areas or local governments in the district who shall make determinations necessary to implement the plan.
  2. A description of specialized equipment, facilities, personnel and emergency response organizations available in the district to respond to releases subject to this section.
  3. Mutual aid agreements with other districts, and the allocation of emergency response resources for responding to releases subject to this section, if applicable.

**26-346. Extremely hazardous substances**

**26-347. Facilities subject to emergency planning; facility emergency response plans**

- A. A facility is subject to emergency planning requirements if a substance identified under section 26-346 is present at the

facility in an amount at or in excess of the threshold planning quantity for that substance.

- B.** For purposes of emergency planning, the commission may designate additional facilities which are subject to this section. The designation shall be accomplished after providing at least thirty days' prior public notice in a newspaper of general circulation in the county where the facility is located, after allowing public comment to the commission for thirty days and after notification to the facility of the proposed designation.
- C.** The owner or operator of a facility subject to this section shall provide to the committee the identity of a facility representative who will provide a facility emergency response plan and who will participate in the emergency planning process as the facility emergency coordinator.
- D.** Each facility subject to this section shall prepare a facility emergency response plan and submit copies of that plan to the commission, the local emergency planning committee for the district in which the facility is located and the fire department with jurisdiction over the facility. A facility that is required to prepare a contingency plan under title 49, chapter 5, article 2 or the resource conservation and recovery act of 1976 (P.L. 94-580; 90 Stat. 2795) may submit that contingency plan in lieu of the emergency response plan required by this section if the information in paragraphs 1 through 7 of this subsection is included in the plan. In preparing the plan required by this section, the facility emergency coordinator shall consult with the local emergency planning committee and other emergency and health professionals to assure maximum coordination with those whose cooperation or services may be required in the event of a reportable release. The facility emergency response plan shall include specific actions to be taken in the event of an imminent or accidental reportable release to safeguard the public health, safety and welfare and the environment to the maximum extent practicable. The facility emergency response plan shall include:
  - 1. Names, addresses and emergency telephone numbers of a facility emergency coordinator and alternate.
  - 2. A description of emergency warning systems and a list of emergency units, emergency personnel and health professionals in close proximity to the facility.
  - 3. A description of employee emergency response training and emergency preparedness programs.
  - 4. A description of appropriate emergency equipment necessary to respond to a release.
  - 5. A description of emergency response procedures including notification procedures and evacuation plans in the event of a release.
  - 6. Identification of transport routes and transportation methods used to transport extremely hazardous substances to and from the facility, if known.
  - 1. Actions taken to respond to and contain the release.
  - 2. Any known or anticipated acute or chronic health risks associated with the release.
  - 3. If appropriate, advice regarding medical attention necessary for exposed individuals.

- 7. Provisions for at least an annual review of the plan and provisions to demonstrate the capability to execute the plan on the request of the commission.

#### **26-348. Emergency notification of reportable releases**

- A.** If a reportable release of an extremely hazardous substance listed under section 26-346 occurs from a facility at which a hazardous chemical is produced, used or stored, the owner or operator of the facility, except as excluded under title 40 code of federal regulations section 355.40, in addition to any other notification required by law or rule, shall immediately orally notify the community emergency coordinator for the local emergency planning committee for any area likely to be affected by the reportable release, and the commission, by notifying the emergency response unit of the department of environmental quality and appropriate emergency responders designated by rule of the commission, in the manner prescribed by rule of the commission. Unless impracticable under the circumstances, this oral notification shall occur immediately after the facility emergency coordinator or his designee has knowledge of the reportable release. The notice of the reportable release shall include the following to the extent known at the time of the notice and as long as no delay in responding to the emergency results:
  - 1. The specific location of the release.
  - 2. The chemical name or identity of substances released and a description of the container or vessel from which the release occurred.
  - 3. An estimate of the quantity of substances which were released into the environment.
  - 4. The time and duration of the release.
  - 5. The medium or media into which the release occurred.
  - 6. Any known or anticipated acute or chronic health risks associated with the release and, if within the informant's knowledge, advice regarding medical attention necessary for exposed individuals.
  - 7. Proper precautions to take as a result of the release, including evacuation and other proposed response actions.
  - 8. The name and telephone number of the person or persons to be contacted for further information.
- B.** Within thirty days after the reportable release, the owner or operator of a facility where a release occurred requiring notification pursuant to this section shall submit to the local emergency planning committee and to the commission a written follow-up emergency notice stating and updating the information originally provided pursuant to subsection A of this section and including the following additional information:
  - 4. Measures which have been or will be taken at the facility to avoid a reoccurrence of similar releases.
- C.** After additional information becomes known, the owner or operator shall update the notice in writing within seven calendar days.

#### **26-349. Material safety data sheets**

- A.** A person who owns or operates a facility which is required to prepare or have available a material safety data sheet for a hazardous chemical under the occupational safety and health act of 1970 (P.L. 91-593; 84 Stat. 1590), and federal regulations adopted under that act, or under title 23, chapter 2, article 10, and rules adopted under that article, shall submit to the local emergency planning committee for the district in which the facility is located, the commission and the fire department with jurisdiction over the facility material safety data sheets or lists of hazardous chemicals and any extremely hazardous substances stored, handled or processed at the facility pursuant to minimum threshold levels prescribed in title 40 code of federal regulations part 370 as well as comply with section 311 of Title III and regulations adopted under that act.
- B.** If a list of hazardous chemicals or extremely hazardous substances is submitted under this section, it shall include:
1. Information prescribed by section 311 of title III.
  2. The chemical abstract service registry number applicable to each such chemical and substance, if available.
  3. An indication of whether the owner elects to withhold information about the hazardous chemical or extremely hazardous substance from disclosure as a trade secret.
- C.** On request of a local emergency planning committee, the commission or the local fire department with jurisdiction over the facility, an owner or operator of a facility who has submitted a list pursuant to this section shall also submit the material safety data sheet for any chemical on the list to the requesting agency. On request by any person, the local emergency planning committee may make available a material safety data sheet to the person or transmit the request to the commission which shall make the material safety data sheet available, subject to the trade secret provisions and regulations adopted under title III. If the committee or commission does not have the requested material safety data sheet, the committee or commission shall request the sheet from the facility owner or operator. The facility owner or operator shall make the sheet available within thirty days after receiving the request to the committee or commission and the committee or commission shall make the sheet available to the requesting person subject to the trade secret provisions and regulations adopted under title III.
- D.** Within three months after discovery by an owner or operator of a facility of significant new information concerning an aspect of a hazardous chemical for which a list or material safety data sheet was submitted, or within three months after a facility obtains a new hazardous chemical subject to the reporting requirements of this section, the owner or operator shall update and submit a revised list or material safety data sheet to the
3. An estimate, in ranges, of the average daily amount of the hazardous chemical present at the facility during the preceding year.
  4. A brief description of the manner of storage of the hazardous chemical.
  5. The location of the hazardous chemical at the facility.

local emergency planning committee, the commission and the fire department with jurisdiction over the facility.

#### **26-350. Emergency and hazardous chemical inventory forms**

- A.** A person who owns or operates a facility which is required to prepare or have available a material safety data sheet for a hazardous chemical under the occupational safety and health act of 1970 (P.L. 91-593; 84 Stat. 1590) and federal regulations adopted under that act or which has to provide a material safety data sheet or listing under this article shall submit to the local emergency planning committee for the district in which the facility is located, the commission and the fire department with jurisdiction over the facility an emergency and hazardous chemical inventory form pursuant to section 312 of title III as well as comply with section 312 of title III and regulations adopted under that act, except that the tier two emergency and hazardous chemical inventory form shall be the required form to comply with section 312 of title III effective with inventory forms due on or after March 1, 1991.
- B.** The inventory form containing tier I information shall be submitted on or before March 1 of 1989 and 1990 and shall contain data on hazardous chemicals present at the facility during the preceding calendar year above the thresholds established in title 40 code of federal regulations part 370. With respect to any specific hazardous chemical at the facility, the owner or operator may submit a tier II form in lieu of the tier I information.
- C.** The tier I inventory form shall contain the following information:
1. An estimate, in ranges, of the maximum amount of hazardous chemicals in each category present at the facility at any time during the preceding calendar year.
  2. An estimate, in ranges, of the average daily amount of hazardous chemicals in each category present at the facility during the preceding calendar year.
  3. The general location of hazardous chemicals in each category.
- D.** The tier II inventory form shall contain the following information:
1. The chemical name or the common name of the chemical as provided on the material safety data sheet and the CAS number.
  2. An estimate, in ranges, of the maximum amount of the hazardous chemical present at the facility at any time during the preceding year.
  6. An indication of whether the owner elects to withhold location information or other information about a specific hazardous chemical from disclosure to the public as a trade secret.
- E.** An owner or operator of a facility subject to this section shall submit the information required by this section on the inventory form provided by the administrator of the United

States environmental protection agency unless the commission establishes its own form which prescribes identical content as prescribed by title 40 code of federal regulations section 370.40.

- F. For purposes of this section, tier I and tier II forms are the forms established under title 40 code of federal regulations part 370.

#### **26-351. Toxic chemical release forms; definitions**

- A. In order to implement section 313 of title III the owner or operator of a facility subject to the requirements of this section and section 313 of title III and regulations adopted under that act shall complete a toxic chemical release form as supplied by the administrator, pursuant to section 313(g) of title III, or as supplied by the commission, for each toxic chemical listed in the code of federal regulations by the administrator pursuant to section 313(c) of title III that was manufactured, processed or otherwise used in quantities exceeding the toxic chemical threshold quantity established by subsection E of this section during the preceding calendar year at that facility. The form shall be submitted to the administrator and to the commission on or before July 1 of each year and shall contain data reflecting releases in excess of the quantity of that toxic chemical established under subsection E of this section during the preceding calendar year.
- B. The requirements of this section apply to owners and operators of facilities that have ten or more full-time employees and that are in standard industrial classification codes 20 through 39 in effect on July 1, 1987 as prepared by the statistical policy division of the United States office of management and budget, office of the president and that manufactured, processed or otherwise used a toxic chemical listed in title 40 code of federal regulations part 372 pursuant to section 313(c) and (d) of title III in excess of the quantity of that toxic chemical established under subsection E of this section during the calendar year for which the release form is required under this section.
- C. The director of environmental quality as the representative of the governor pursuant to this section may request the administrator to apply the requirements of this section to the owners and operators of any particular facility that manufactures, processes or otherwise uses a toxic chemical listed pursuant to section 313(c) of title III if the administrator determines that such action is warranted on the basis of toxicity of the toxic chemical, the proximity to other facilities that release the toxic chemical or to population centers, the history of releases of the chemical at the facility or such other factors as the administrator deems appropriate.
- (a) Whether the toxic chemical at the facility is manufactured, processed or otherwise used, and the general category or categories of use of the chemical.
- (b) An estimate of the maximum amount in ranges of the toxic chemical present at the facility at any time during the preceding calendar year.
- D. The toxic chemicals subject to the requirements of this section are those chemicals listed in title 40 code of federal regulations by the administrator pursuant to section 313(c) of title III, including any revised version of the list as may be made pursuant to section 313(d) or (e) of title III. The director of environmental quality as the representative of the governor, pursuant to section 313(e) (2) of title III, may petition the administrator to add a chemical to or delete a chemical from the list identified in this section.
- E. The threshold amounts for purposes of reporting toxic chemicals under this section are:
1. With respect to a toxic chemical used at a facility, ten thousand pounds of the toxic chemical for the applicable calendar year.
  2. With respect to a toxic chemical manufactured or processed at a facility:
    - (a) For the toxic chemical release form required to be submitted under this section on or before July 1, 1988, seventy-five thousand pounds of the toxic chemical per year.
    - (b) For the toxic chemical release form required to be submitted under this section on or before July 1, 1989, fifty thousand pounds of the toxic chemical per year.
    - (c) For the toxic chemical release form required to be submitted under this section on or before July 1, 1990 and for each year thereafter, twenty-five thousand pounds of the toxic chemical per year.
- F. The threshold amounts for purposes of reporting toxic chemicals under this section shall be adjusted pursuant to revisions by the administrator.
- G. Owners and operators of facilities subject to the requirements of this section shall provide the information required under this section on a uniform toxic chemical release form published by the administrator or on a uniform toxic chemical release form published by the director of environmental quality. The form shall:
1. Provide for the name and location of and principal business activities at the facility.
  2. Include an appropriate certification, signed by a senior official with management responsibility for the person or persons completing the form, regarding the accuracy or completeness of the report.
  3. Provide for the following information for each listed toxic chemical known to be present at the facility:
    - (c) For each wastestream, the waste treatment or disposal methods employed and an estimate of the treatment efficiency typically achieved by such methods for that wastestream.
    - (d) The annual quantity of the toxic chemical entering each environmental medium.

**H.** The release forms required under this section are intended to provide information to the federal, state and local governments and to the public, including citizens of communities surrounding facilities covered by this section. The release form shall be available consistent with the trade secret provisions of title III to inform persons about releases of toxic chemicals to the environment, to assist governmental agencies, researchers and other persons in conducting research and data gathering, to aid in developing appropriate rules and regulations, guidelines and standards and for similar purposes.

**I.** For purposes of this section:

1. "Administrator" means the administrator of the United States environmental protection agency.
2. "Manufacture" means to produce, prepare, import or compound a toxic chemical.
3. "Process" means the preparation of a toxic chemical after its manufacture for distribution in commerce either:
  - (a) In the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing the chemical.
  - (b) As part of an article containing the toxic chemical.

#### **26-352. Emergency response fund**

The emergency response fund is established consisting of monies appropriated by the legislature for purposes of section 26-305.02 and this article and federal, private and other monies available for that purpose. The chairman of the commission shall manage the fund and expend monies in the fund in performing the functions required or authorized by this article. All interest earned from investing monies in the fund shall be credited to the fund. Monies in the fund are subject to legislative appropriation and are exempt from section 35-190 relating to lapsing of appropriations.

#### **26-353. Emergency response; immunity**

A licensed, certified or authorized emergency responder and its employees at the scene of an emergency, when the emergency response is provided in good faith, have the immunities provided in section 26-314 in carrying out the provisions of this article. The immunities provided by section 26-314 also apply to governmental entities, multi-jurisdictional planning organizations that encompass each district, members of each local emergency planning committee and their support personnel in carrying out the provisions of this article.

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